IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No: 291 of 2000

Judgment reserved on: 24.9.2007

Date of decision: 5.10.2007

State of Himachal Pradesh **..Appellant**

Versus

Rameshwar Kumar and another **..Respondents**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

For the Appellant: Mr. J.S.Guleria, Law Officer

For Respondent No.1: Mr. Rajesh Mandhotra, Advocate

For Respondent No.2: Mr. Lovneesh Kanwar, Advocate

Deepak Gupta, J.

This appeal is directed against the judgment of the Additional Chief Judicial Magistrate, Shimla in Case No. 117/2 of 1996, decided n 30.1.1999 whereby the accused have been acquitted of having committed offences punishable under Sections 325/506 read with Section 34 I.P.C.

The prosecution case in brief is that on 30.8.1995 at about 6.00 p.m. PW-2, Kanta was cutting

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

grass in her fields when the accused Chander Shekhar came armed with a darat and accused Rameshwar Kumar armed with a Kulhari (axe) came to the spot. Accused Chander Shekhar dealt a blow of darat and accused Rameshwar dealt a blow of Kulhari on the right arm of Kanta due to which she sustained injuries. She raised an alarm and her father, complainant PW-1, Ram Chand immediately reached the spot where he was also beaten up by the accused. Thereafter some villagers, Chet Ram, Sukh Ram, Heera Singh etc. reached the spot and rescued Kanta and her father. FIR was lodged. Injured was medically examined and investigation completed and challan was filed in court. After appearance the accused were charged. They pleaded innocence and claimed trial. The learned trial court has acquitted the accused by the impugned judgment. Hence this appeal.

PW-2, Kanta is the injured. According to her she was cutting the grass in her fields. Her father, PW-1 Ram Chand was carrying some grass home when accused Chander Shekhar armed with darat and accused Rameshwar Kumar armed with Kulhari came there. According to her both the accused caused injuries on her

right arm with the weapons they were carrying. Thereafter her father, Chet Ram and Yashoda came to the spot and she was taken to the police station. In cross examination a suggestion has been put to her that the property in question was mortgaged by her grand-father with Chando Devi. She has feigned ignorance about the same. She has also denied that Chando was cultivating the suit property. She has admitted that Rameshwar used to live with Chando Devi. She has denied the suggestion that she alongwith Hari Singh, Suraj and Shanti Devi had assaulted the accused. She was confronted with her statement recorded under Section 161 Cr.P.C. wherein she had reported to the police that accused Chander Shekhar had dealt a blow with Kulhari. She has denied having made that statement and according to her it was Rameshwar who was armed with Kulhari.

PW-1 Ram Chand is the complainant. He has made a similar statement and according to him he saw Rameshwar giving a blow of Kulhari on the right hand of his daughter and thereafter he lodged the FIR. In cross examination he has denied the suggestion that he is not the owner of the suit property. He, however, did not produce any document to show that he is the owner of the

suit property. He denied the suggestion that Chando Devi was the owner of the property and had willed the same in favour of Rameshwar . He, however, was forced to admit that mutation in respect of the property has been entered in favour of Rameshwar and that the appeal filed by the witness (Ram Chand) was dismissed by the Financial Commissioner. He has denied the suggestion that they wanted to forcibly take possession of the disputed property. According to him the property was initially mortgaged with Chando Devi which had been redeemed.

PW-3 Chet Ram is stated to be an eye witness. According to him only Rameshwar caused injuries to the injured. His statement contradicts the statements of PWs 1 and 2 who have stated that both, Rameshwar and Chander Shekhar had caused injuries on the person of the injured. He admitted that dispute with regard to the property has arisen after the death of Chando Devi.

PW-7 Yashoda has made a statement similar to that of Chet Ram. PW-8, Hira Singh stated that on 30.8.1995 police had got khasra No. 323 demarcated. After the demarcation they went home at about 6.00 p.m. They heard noise and they returned to fields and saw

that Kanta had sustained injuries on her right arm. Ram Chand was assaulted by accused Rameshwar with the handle of the axe while accused Chander Shekhar was holding Ram Chand. Thereafter Yashoda, Chet Ram, Suraj Pal and the witness intervened and then the accused fled away.

Surprisingly though this witness talks of some demarcation having taken place on 30.8.1995, there is no mention of such demarcation either by PW-1 or the injured, PW-2. There is no explanation as to why the police had come to demarcate the fields. As far as medical evidence is concerned, PW-4, Dr. Sneh Sood had medically examined the injured initially on 30.8.1995 at 9.30 p.m. She had found a clean lacerated wound on the front fore-arm 6" above the wrist. There was also a bruise on left leg. The injured was advised X-ray and thereafter the doctor issued M.L.C. Ex.PW-4/A.

PW-5 Dr. Suresh Sankhyan examined the injured Kanta under the orders of the court on 30.9.1995. By that time stitches had already been applied to the wound on the right fore-arm. He could not give any opinion about the nature of the weapon used.

From the evidence led before the trial court it is apparent that there is some land dispute between the parties. It is also proved that Khasra No. 323 was mortgaged with Chando Devi by the predecessor of complainant, PW-1. Though PW-1 states that the property had been redeemed, no document has been placed on record to prove this fact. In fact the accused persons have filed Ex.DA, copy of report lodged by Rameshwar accused against Ram Chand and others. This report has also been lodged on 30.8.1995. Ex.DB is the copy of the judgment dated 24.9.1998 whereby accused Chander Shekhar, his wife, Meena and one Uma have been acquitted of an offence of having trespassed over the land of khasra No. 323. The incident in that case is alleged to have taken place on 10.7.1995. Ex. DC is the copy of order of the Financial Commissioner whereby he has held that the will executed by late Chando Devi in favour of the petitioner is a valid will and has ordered that the name of Rameshwar Kumar be incorporated in the revenue record as her heir. Entry showing the Rameshwar to be in possession of the property was also incorporated, as is evident from Ex. DD and Ex. DE. It is apparent that the dispute has taken place over khasra No. 323. Both the

parties claim ownership of the said khasra number. However, prima facie the ownership appears to be that of Rameshar. A scuffle may have taken place, but there is doubt with regard to the genesis of the entire dispute. It is not clear who is the aggressor party. The learned trial court has given benefit of doubt to the accused. There are many contradictions in the statements of the prosecution witnesses and it appears that they may have trespassed over the property of the accused. Therefore, I find no reason to interfere in the judgment of acquittal. The appeal is accordingly dismissed.

October 5, 2007(K) (Deepak Gupta), J.